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No. 78

In the Supreme Court of the United States

OCTOBER TERM, 1942

UNITED STATES OF AMERICA, PETITIONER

v.

VICTOR N. MILLER, ALSO KNOWN AS VIC MILLER; JOHN J. HUMPHREY, ALSO KNOWN AS JOHN J. HUMPHREY, SR., ALSO KNOWN AS J. M. HUMPHREY; CHARLES J. MCCONNELL, ALSO KNOWN AS CHAS. J. MCCONNELL; ELMER JOHNSON AND HILMA JOHNSON, HIS WIFE; DAVID WILSON AGNEW; ALBERT ROUGE; AND FLORENCE VAN SANTEN

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES

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OPINION BELOW

The district court delivered no opinion. The opinion of the circuit court of appeals (R. 466–476) is reported in 125 F. (2d) 75.

JURISDICTION

The judgment of the circuit court of appeals was entered January 22, 1942 (R. 477). The petition

for a writ of certiorari was filed April 22, 1942, and was granted June 1, 1942 (R. 478). Jurisdiction of this Court is invoked under section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

1. Whether just compensation for condemned lands includes increases in value resulting from announcement of the public project in connection with which the lands are later taken.

2. Where a federal officer, pursuant to the Declaration of Taking Act, makes a deposit of estimated compensation which is withdrawn by landowners on order of the court and which exceeds the amount of just compensation later awarded, whether the United States may have judgment in the condemnation proceeding against the landowners for the excess of the withdrawn deposit over the award.

STATUTE INVOLVED

Section 1 of the Declaration of Taking Act of February 26, 1931, 46 Stat. 1421–1422 (U. S. C., title 40, sec. 258a), section 2 of the Act of August 26, 1937, 50 Stat. 844, 850, and part of the Act of May 9, 1938, 52 Stat. 291, 324, are set forth in the Appendix, *infra*, pages 30–34.

STATEMENT

On April 6, 1934, the Chief of Engineers, United States Army, recommended that the Federal Gov-

ernment contribute $12,000,000 toward construction of the Central Valley Project dam on the Sacramento River, at that time proposed to be undertaken by the State of California. Rivers and Harbors Com. Doc. No. 35, 73d Cong., 2d Sess., 5. In the next year Congress authorized the appropriation of that amount for the dam. Act of August 30, 1935, 49 Stat. 1028, 1038. On December 22, 1935, the President, upon the recommendation of the Secretary of the Interior, approved construction of the whole Project as a federal reclamation project, for the conservation, regulation, and utilization of the water resources of the Sacramento and San Joaquin Rivers (see R. 236). Congress appropriated $6,900,000 for the Project in 1936 and $12,500,000 in 1937. Act of June 22, 1936, 49 Stat. 1570, 1622; Act of August 9, 1937, 50 Stat. 564, 597.[1] In his report for the fiscal year ending June 30, 1937, the Secretary of the Interior stated (pages 7–8) that Shasta, California, had been selected for the site of the Sacramento River dam. The Central Valley Project was reauthorized by Congress in section 2 of the Act of August 26, 1937, 50 Stat. 844, 850.

Construction of the Shasta dam required relocation of thirty miles of the line of the Central Pacific Railroad, for the reservoir behind the dam

[1] A further appropriation of $9,000,000 was made by the Act of May 9, 1938, 52 Stat. 291, 324.

would flood part of the existing right-of-way (R. 5–6, 157–158). Lands belonging to respondents were needed for the relocated right of way.[2] This was staked out on the ground as early as March 1936 with markers at intervals of 100 feet (R. 169, 175, 184–185). An alternative line was also marked by stakes at the same period (R. 177–180).[3]

Respondents' property was located in an area of Shasta County, approximately four miles from the damsite, known as Boomtown (R. 164–166, 208, 229). The portions of Boomtown in which respondents' lands were situated (Units Nos. 4 and 5) consisted largely of uncleared brush land as late as December 1937 (R. 263–264, 289). The first house in Boomtown was built in Novem-

[2] Of the land to be condemned Miller, McConnell, and Humphrey owned 10.61 acres (R. 16–22, 422); Elmer and Hilma Johnson owned 4.81 acres (R. 11–14, 421); Agnew owned .92 of an acre (R. 14, 422); Rouge and Van Santen owned, respectively, .047 and .0125 acres (R. 7–11, 420–421).

[3] Respondent Miller testified that he did not know "anything as to exactly where that right-of-way was to go" until the condemnation (R. 273). Respondent Agnew testified that he saw no stakes in 1938 when he acquired his land (R. 328). L. R. Kronschnabel, a defendant in the district court who is not a respondent here, testified that he, Miller, Humphrey, and Rouge caused some of the land condemned to be subdivided in 1938 on the assumption that the railroad would be relocated where it later was in fact relocated (R. 290–292). And one George L. Pearl, employed by some of the respondents to subdivide other land (part of which was later condemned), put the proposed right of way of the railroad on a plat which he made in September 1937 (R. 224–226).

ber 1937 (R. 414), and during most of the year little of the land in Boomtown was improved (R. 355–356). Most of the respondents came to Boomtown and acquired land there in 1936 or after.[4] Two were realtors interested in developing the area.[5] By December 1938 Boomtown had become built up for business[6] and residential purposes and was an active (at times even congested) place, owing to the presence of large numbers of persons employed in construction of the nearby dam (R. 204–207).

On December 14, 1938, the Government filed in the District Court of the United States for the Northern District of California, Northern Division, an amended complaint in eminent domain against respondents and others whose lands were needed for the relocated railroad (R. 2–23). On the same day, pursuant to the Act of February 26, 1931, 46 Stat. 1421 (U. S. C., title 40, secs. 258a–258e), a declaration of taking executed by the Acting Secretary of the Interior was filed (R. 23–34). The declaration

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[4] Humphrey (R. 227, 262–263) (1936–1937); Miller (R. 271, 282–283) (1936–1937); Johnson (R. 316) (1937); Agnew (R. 327) (1938); Van Santen (R. 324) (1938). Rouge had owned land in Central Valley (the post-office address of Boomtown) since 1921 (R. 302–303). McConnell did not testify.

[5] Humphrey (R. 227–228, 261); Miller (R. 271).

[6] The businesses established comprised "Eating houses, furniture stores, second hand stores, beer parlors, entertainment businesses, fruit markets, produce markets, garages" (R. 206).

estimated $2,550 as just compensation to be paid for the tract belonging to respondents Miller, Humphrey, and McConnell, and that sum was deposited in court (R. 33–34). Upon the application of those respondents (R. 69–72), the court directed its clerk to pay each of them a third of the deposit, or $850, on account of the just compensation which they were entitled to receive (R. 73–74).

At the trial respondents sought to introduce evidence of sales of land prior to December 14, 1938, in the vicinity of the land in suit (R. 231). The Government objected to the introduction of this evidence as it would not exclude sales occurring after August 26, 1937, the date on which Congress reauthorized the Central Valley Project as a federal undertaking. The district court sustained the objection (R. 231–232). Respondents did not offer any evidence concerning sales in the vicinity made before August 26, 1937. Thereafter, in testifying as to the value of the land in suit the witnesses were limited to stating the fair market value of the several parcels on December 14, 1938, "leaving out of consideration any increase * * * in that value from and after August 26, 1937, due to the Central Valley Project" (R. 248, 252, 274, 304, 317, 319, 339, 352, 367–369, 406–407). The court, in the charge to the jury, instructed that they were required to find the market value of the property condemned, as of the time of the taking, December 14,

1938 (R. 420, 423). The court further charged (R. 428–429):

> As you have already heard, this property is being taken for the so-called Central Valley Project. If the announcement of, plans for, or the carrying out of that project has increased or enhanced the value of the lands involved in this case, since or after August 26, 1937, such increase or enhancement in value is not to be considered by you. The value you are to fix and award as compensation is the value this land would have had had this project not been announced, planned or constructed on August 26, 1937. It may be that because of this project the use for which the property is suited may have changed. You should consider it only for the use to which it was suited or adapted before that use was changed by the project. The government must not be required to pay for something it has itself made.
>
> You are instructed that this acquisition or project was authorized by an Act of the Congress of the United States approved August 26, 1937, and I instruct you that you may not consider and include in your verdict any increase in value of these lands which may have occurred from and after that date which you may find was attributable to the announcement of plans for or construction of this project.

The jury awarded respondents Miller, Humphrey, and McConnell $500 for their land and $100 sever-

ance damages (R. 112).[7] Since the court had allowed them to withdraw the $2,550 deposited with the declaration of taking, or $1,950 more than the compensation determined to be due, judgment was entered against each for $650, the excess amount which each had received (R. 124–125).[8]

The circuit court of appeals reversed (R. 477), holding (1) that the respondents were entitled to compensation for the value of their lands on the date of the taking, including increases in value resulting from reauthorization of the project in connection with which the lands were taken (R. 468–475), and (2) that the district court lacked jurisdiction to order restitution of the excess amounts which respondents Miller, Humphrey, and McConnell had been paid (R. 468). Judge Garrecht dissented with respect to the first proposition (R. 475–476).

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[7] The testimony as to the value of each of the condemned parcels owned by respondents and the jury's awards with respect to these lands may be summarized as follows:

	Government		Respondents		Jury
Miller, McConnell, and Humphrey	$110.50	$219.99	$17,800	$20,000	$300
Johnsons	48.50	48.10	2,900		125
Agnew	.20		100	130	15
Rouge	.50	6.47	700		50
Van Santen	12½	10.00			10

[8] The court entered judgment for the other respondents in the respective amounts which the jury by its verdict had awarded (R. 120–124).

SPECIFICATION OF ERRORS TO BE URGED

The circuit court of appeals erred:

1. In holding that just compensation to respondents for their land included increases in value since August 26, 1937, owing to the Central Valley Project.

2. In holding that the district court lacked jurisdiction to enter judgment for the United States against respondents Miller, McConnell, and Humphrey in the amount of the excess of the deposit withdrawn by them over the award of just compensation.

3. In reversing the judgment of the district court.

SUMMARY OF ARGUMENT

I

Any increase in the value of Boontown lands after August 26, 1937, resulting from the Central Valley Project was created by the Government. Accordingly, when the Government came to condemn respondents' property for relocation of a railroad—which was envisaged as an essential part of the project when the project was announced on August 26, 1937, by the reauthorization statute—any such increase did not constitute an element of just compensation to the landowners. To include it would depart from the principle in eminent domain valuation that both parties must be fairly treated, and would encourage real estate operators

to speculate at government expense in areas where public improvements are being undertaken. The rulings of the district court excluding increases in value after the reauthorization date which were due to the project follow from the decision of this Court in *Shoemaker* v. *United States*, 147 U. S. 282, and are in accord with the decisions of state courts. The result reached by the district court does not, as the court below stated, exclude from fair value increases after August 26, 1937, owing to causes other than the project.

Equally groundless was the fear of the circuit court of appeals that the rule of the district court in this case would permit the Government, long after a project is undertaken, to condemn new land for a purpose (in connection with the project) which was not contemplated when the project was authorized, paying as compensation an amount which did not include increases in value owing to the project and accruing after the authorization. Relocation of part of the line of the Central Pacific Railroad in the present case was contemplated long before August 26, 1937, the new route was surveyed and marked out on the ground in 1936, and the Act of August 26, 1937 (reauthorizing the Central Valley Project), comprised necessary relocations within its scope.

II

The amount of compensation to be paid a landowner whose property is being condemned is to be

fixed, under the Declaration of Taking Act, by a judicial award. The Government estimates what just compensation will be and deposits that sum in court, solely for convenience—to enable the Government to secure title quickly and to assure the property owner early payment of an amount approximating what will ultimately be found due him. The estimate should not be considered binding on the Government any more than it is binding on the property owner. While the statute is silent on the point, this result is consonant with its provisions generally and with its legislative history; the result is strongly indicated by considerations of justice and policy. Had the deposit remained in court, the judgment for the land owners would have been limited to the amount of the award. The fact that the three respondents here withdrew the estimated compensation deposited should in no way improve their position. Since the Government has paid them too much, it is entitled to recover the excess. Cf. *United States* v. *Wurts*, 303 U. S. 414.

There is no reason why the recovery must be sought in a separate proceeding, for no issues remain to be determined and it is appropriate to settle finally in the condemnation suit the matter of controversy between the condemnor and the landowner. Although the Declaration of Taking Act does not expressly provide for judgments of restoration to the Government, the district

court had power to order restitution when it appeared that an excessive amount had been paid over to the three respondents pursuant to the court's earlier order. Cf. *Baltimore & Ohio R. R. v. United States*, 279 U. S. 781.

ARGUMENT

I

JUST COMPENSATION FOR LAND CONDEMNED DOES NOT INCLUDE INCREASES IN VALUE RESULTING FROM THE ANNOUNCEMENT OF A PUBLIC PROJECT IN CONNECTION WITH WHICH THE LAND IS LATER TAKEN

The lands here in suit were condemned for use in carrying out the Central Valley Project, an essential part of which was relocation of a portion of the line of the Central Pacific Railroad. In the proceeding to fix just compensation for them, the district court excluded from their value any increase after August 26, 1937, resulting from the Project, on the theory that the Government should not pay in eminent domain for values which it created by undertaking the project in connection with which the instant property was being taken. To this end it limited the testimony of the witnesses concerning fair market value on December 14, 1938, so that it would not reflect any such increase; excluded evidence of sales after August 26, 1937; and instructed the jury not to consider increases in value after the latter date which resulted from announcement of the Central Valley Project. (See

Statement, pages 6–7, *supra*.) Thus, the court did not exclude increases in value due to causes other than the announcement and commencement of the project, as for example increases resulting from a discovery of valuable minerals.

Hence, the disputed element is increase in value after August 26, 1937, resulting from the undertaking of the Shasta dam construction in the vicinity of Boomtown, which brought large numbers of construction personnel to the area and presented the opportunity for business and residential development of Boomtown.[9]

The rule is settled that any increase owing to the condemnor's necessity for or proposed use of the land is not to be allowed as a constituent of fair market value at the time of taking.[10] See *Olson* v. *United States*, 292 U. S. 246, 256, 261. The basis

[9] It was not until after August 26, 1937, when Congress reauthorized the Central Valley Project, that this development materialized. (See Statement, pages 4–5, *supra*).

[10] The district court did, however, include in its charge an instruction that "The government may not be required to pay any increase in the value of the property which it has caused by reason of its contemplated taking of the property by eminent domain proceedings. Any rise in value before the taking should be allowed to the property owners but not any rise caused by the expectation that the government intended to condemn the property" (R. 428). This instruction was clearly correct. *United States* v. *Chandler-Dunbar Water Power Co.*, 229 U. S. 53; *Seaboard Air Line Ry.* v. *United States*, 261 U. S. 299; *Continental Land Co.* v. *United States*, 88 F. (2d) 104 (C. C. A. 9), certiorari denied, 302 U. S. 715; *Five Tracts of Land in Cumberland Tp.* v. *United States*, 101 Fed. 661 (C. C. A. 3).

of this rule is that the public ought not to be required to pay for a value which it has created. The rule for which the Government is contending in the present case rests on the same basis. It differs in the fact that here it was not known, when the Central Valley Project was announced as a federal undertaking, exactly what land would be taken for relocation of the railroad; any increase in the value of respondents' land therefore was owing in part to the possibility that respondents would continue to hold the property and thus enjoy the economic benefits of the construction boom. But this increase is attributable to the Government's project; that the increase resulted indirectly rather than immediately should not enlarge the Government's liability when it condemns the property for use in the project which enhanced its value.

The result reached by the district court in excluding from the value of respondents' lands when taken any increase after August 26, 1937, owing to the Central Valley Project, is squarely supported by the decision of this Court in *Shoemaker* v. *United States*, 147 U. S. 282. In that case the facts were as follows: Congress enacted in 1890 a statute to provide for the establishment of a public park along Rock Creek in the District of Columbia. Within specified limits commissioners were to select not exceeding 2,000 acres of land for the park. In 1891 the commissioners prepared a map of the property they had selected. In proceedings to con-

demn some of the land, the Supreme Court of the District of Columbia instructed the appraisers that they should "receive no evidence tending to prove the prices actually paid on sales of property similar to that included in said park, and so situated as to adjoin it or to be within its immediate vicinity, when such sales have taken place since the passage of the act of Congress of the 27th of September, 1890, authorizing said park, * * *" (see 147 U. S. at 303). The court further instructed (*id.* at 304):

> * * * They are not at liberty to place a value upon these lands upon the basis of what one might be willing to buy them on time for purely speculative purposes, nor can they consider the value given them by the establishing the park, * * *.

This action of the District of Columbia court exactly parallelled that of the district court in the present case. In the *Shoemaker* case enactment of the statute of 1890 announced the project for Rock Creek Park. The announcement may have enhanced land values within the geographical limits set by Congress because of the possibility that the United States might take particular land or if it did not that the land would benefit from the proximity of the park. Accordingly, the court excluded from the value of land taken any increase after September 27, 1890, owing to these causes. This Court sustained the instructions given by the Supreme Court of the District (147 U. S. at 305).

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A majority of the circuit court of appeals thought that *Shoemaker* v. *United States* was distinguishable. Pointing to this Court's citation (147 U. S. at 305) of *Kerr* v. *South Park Commissioners,* 117 U. S. 379, the court below explained the *Shoemaker* decision on the basis of the *Kerr* case. In the latter case evidence of sales of lands near the lands condemned, which sales had been made after the boundaries of a proposed park had been fixed, was excluded because the sale prices would reflect an increase in value (owing to prospective benefits from the neighboring park) which the condemned property could not have because it would be part of the park. The court below reasoned that the first instruction in the *Shoemaker* case was upheld because it ruled out evidence concerning sales of lands which were not similar to the lands condemned. We submit that this analysis of the *Shoemaker* decision is unsound and is based on the assumption, first, that the lines of Rock Creek Park were fixed upon passage of the act authorizing establishment of the park and, second, that this Court so regarded the situation (see R. 473). It is apparent from the Act of September 27, 1890, that this assumption is erroneous; in fact, the commissioners were required to select within stated limits an area not exceeding 2,000 acres; and this Court's Statement in the *Shoemaker* case (147 U. S. at 284) shows that it so understood the facts. As Judge Garrecht remarked in his dissenting opinion below (R. 475), the boundaries of Rock Creek Park were

probably less clearly ascertainable on September 27, 1890, than was the line for railroad relocation here on August 26, 1937; before that date stakes marking the proposed route had been set out, and the testimony of two witnesses (see Statement, *supra*, page 4, note 3) discloses that this route was known to some at least of the respondents.

The Court in *Shoemaker* v. *United States* (107 U. S. at 304–305) approved a second instruction: that the appraisers should not "consider the value given * * * [the lands] by the establishing the park." Under its terms no increase after September 27, 1890, in the value of lands situated within the permissive limits set by Congress and later condemned was to be allowed as an element of compensation if the increase resulted from anticipation of the park project. Approval of this instruction is plainly authority for the parallel instruction given by the district court in the instant case (R. 428–429) and for its rulings limiting the testimony concerning value. (See Statement, *supra*, pages 6–7.) The circuit court of appeals discussed the second instruction approved in the *Shoemaker* case[11] under the separate heading "Time of Fixing Values" (R.

[11] The court below referred (R. 473) to the approval in the *Kerr* case (117 U. S. at 385) of an instruction (*id.* at 384) that increases in the value of land (sought to be condemned for park purposes) which resulted from anticipation of legislation establishing the park should be considered in estimating just compensation. But it should be noted that this instruction was limited to increases which had occurred before the legislation was enacted and, therefore, before the "project" was definitively approved. Such increases were likewise allowed in the instant case.

473–475). We submit that in doing so the circuit court of appeals showed its misconception of the holding of the *Shoemaker* case. The questions raised by the two instructions in the *Shoemaker* case, and by the action of the district court in this case are aspects of a single problem: whether just compensation includes increases resulting from announcement of a project in connection with which the property is later taken.

The court below in its discussion of the "Time of Fixing Values" stated the Government's position as being "that values of real properties which may possibly be taken by the Government are frozen at the values existing at the time of determining upon the construction of a public improvement" (R. 473).[12] It is clear, however, from the rulings and instructions of the district court that only increases in value (after August 26, 1937) which were owing to the Central Valley Project were to be excluded; the questions put to the witnesses were framed in exactly this way. The holding of the district court permitted consideration of increases (after the reauthorization date) which were owing to causes other than the project. If,

[12] In its preliminary statement the court referred to the district court's "holding that the fair market value of the lands taken on December 14, 1938 * * * was to be established without taking into consideration any increase in value which occurred after the passage of the Central Valley project authorization Act of August 26, 1937" (R. 468).

for example, commercially important minerals had been discovered in the lands of respondents, the resultant rise in the worth of the property would have been taken into account.

The circuit court of appeals thought that the rule of the district court would work injustice on property owners because "Any governmental activity in connection with the improvement in any reasonable vicinity of the site of the improvement would give the Government the right to step in and condemn property at its market value as of a date immediately preceding announcement of the intended improvement, notwithstanding its legitimate rise in market value for ordinary commercial purposes. Long after commencement of the improvement the Government officials could make up their minds that an administration building should be erected upon a certain corner of a town established since the beginning of and because of the improvement" (R. 474). It is plain that the district court here did not go so far. Relocation of the railroad was an essential part of the Central Valley Project as it was planned at the time of the reauthorization statute, and more particularly was a necessary step in construction of the Shasta dam (which resulted in the development of Boomtown). Not only was relocation contemplated as part of the project when the reauthorization statute was passed, but the proposed line of the relocated railroad had even earlier been marked on the ground

and had been made known to some of the respondents.

We think that the court below was in error when it said (R. 468): "It must be borne in mind at all times that none of the lands, the subject of this action, were lands contemplated for use by the Government in the terms of the [reauthorization] Act." That statute conferred power in the broadest terms to carry forward the project: "* * * the Secretary of the Interior * * * may acquire by proceedings in eminent domain, or otherwise, all lands, rights-of-way, water rights, and other property necessary for" the project. Section 2 of the Act of August 26, 1937, 50 Stat. 850 (set forth in Appendix, *infra*, pp. 2–3). Congress had before it when it enacted these provisions the Annual Report of the Secretary of the Interior for the fiscal year 1936, which stated (p. 64) that the Bureau of Reclamation had completed surveys for the relocation of 30 miles of railroad in the Shasta Dam area of the Central Valley Project.[13] Cf. R. 158; see Statement, *supra*, p. 3. If Congress had intended to restrict the authority of the Secretary so as not to include the power to condemn for relocation purposes, it would have used less sweeping language in the face of the Secretary's statement

[13] In his annual report for the fiscal year ending June 30, 1937, the Secretary stated (pp. 7–8) that construction was planned for 1938 on relocation of the line of railroad involved in this case.

of what the Department of the Interior was then proposing to do. The fact that Congress in a later act,[14] appropriating additional funds for the Central Valley Project, inserted a specific authorization for the Secretary to purchase or condemn land for relocation of highways, railroads, and transmission lines in no way detracts from the broad authority earlier granted. The later statute can only be taken as a clarifying provision, inserted in the appropriation act from abundance of caution.[15]

We think that no injustice to landowners will result if in the present case increases in value after August 26, 1937, owing to the Central Valley Project, are excluded from consideration. Any such increases are created by the action of the condemnor in undertaking an improvement, and the public should not be required to pay them, just as it is not required to pay increases allocable to the condemnor's necessity or proposed use. To hold otherwise would encourage speculation in land values in areas where the Government is undertaking public works programs with the consequence that the cost to the Government of land needed in a project, but not at first specifically settled on for condemnation, would become unreasonable. The

[14] Act of May 9, 1938, 52 Stat. 291, 324.

[15] The legislative history of the Acts of August 26, 1937, and May 9, 1938, sheds no light on the scope of the power conferred on the Secretary by the former or the reason for inserting in the latter the specific authority to condemn for relocation

mushroom growth of Boomtown after August 1937 is an apt illustration. At least five of the respondents first acquired their holdings of land in 1936, 1937, and 1938 in anticipation of the Central Valley Project, and two of them were realtors actively promoting the boom.

The rule of valuation for which the Government has contended in this case is supported by numerous authorities, in addition to *Shoemaker* v. *United States, supra.* If authorization of the Central Valley Project had depressed the value of respondents' lands, the Government could not have discharged its obligation to make just compensation by paying the depreciated prices. *South Twelfth Street,* 217 Pa. 362, 366; *Hermann* v. *North Pennsylvania R. R.,* 270 Pa. 551, 553 *et seq.*; Re *Gibson and City of Toronto,* 28 Ont. 20, 28 *et seq.*; cf. *Danforth* v. *United States,* 308 U. S. 271, 285. The converse of this proposition should be true. See *Murray* v. *United States* (App. D. C.), decided July 20, 1942; 1 Nichols, *Eminent Domain* (2d ed. 1917) 675–677, sec. 221. It has been so held in numerous cases. *San Diego Land and Town Co.* v. *Neale,* 78 Cal. 63, 74–75; *Shreveport Traction Co.* v. *Svara,* 133 La. 899, 907–910; *Benton* v. *Brookline,* 151 Mass. 250, 257 *et seq.*; *May* v. *Boston,* 158 Mass. 21, 29–31; *Mowry* v. *Boston,* 173 Mass. 425, 426–428; *St. Louis Electric Terminal Ry.* v. *MacAdaras,* 257 Mo. 448, 463–469; *Nichols* v. *Cleveland,* 104 Ohio St. 19, 34; *Egan* v.

Philadelphia, 108 Pa. Super. 271, 274–277; *Seaboard Air Line Ry.* v. *United States*, 275 Fed. 77, 82–83 (E. D. S. C.). It is true that the owners of lands which are not taken in connection with the public improvement may receive a windfall through enhanced value on account of proximity. But the Government's liability to those whose land it condemns is not thereby increased. This Court has stated: "There is no guarantee that he [whose land is taken] shall derive a positive pecuniary advantage from a public work whenever a neighbor does." *McCoy* v. *Union Elevated R. R.*, 247 U. S. 354, 366.

II

THE UNITED STATES WAS ENTITLED TO A JUDGMENT FOR RESTITUTION OF THE AMOUNT BY WHICH THE DEPOSIT UNDER THE DECLARATION OF TAKING ACT EXCEEDED THE JUDICIAL AWARD OF COMPENSATION

The court below held, without giving any reason, that the district court lacked jurisdiction to order respondents Miller, McConnell, and Humphrey to restore to the Government the difference between the award and the deposit, which they had received before trial.[16] Section 1 of the Act of February 26,

[16] The majority opinion of the circuit court of appeals referred to no authority in support of its conclusion. Judge Garrecht, who concurred with the majority on this question, cited *Los Angeles, etc. Ry.* v. *Rumpp*, 104 Cal. 20. That case held that under the California Code a condemnor was estopped to recover part of an award paid before trial if it were later found to be too high, because under the state con-

1931, 46 Stat. 1421–1422 (U. S. C., title 40, sec. 258a), under which this case arises, provides, in part:

> Upon the application of the parties in interest, the court may order that the money deposited in the court, or any part thereof, be paid forthwith for or on account of the just compensation to be awarded in said proceeding. If the compensation finally awarded * * * shall exceed the amount of the money so received by any person entitled, the court shall enter judgment against the United States for the amount of the deficiency.

While the act thus provides for the case where the compensation judicially awarded is greater than the amount received from the deposit, it does not take care of the occasional situation where the reverse is true. The statute of course does not make the deposit binding on the Government, and no reason appears why such a result should be read into it.[17] On the contrary, it is only reasonable to

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stitution a condemnor cannot take possession of land without first paying just compensation. Since the Federal Constitution does not impose such a requirement (see, *e. g.*, *Cherokee Nation* v. *Southern Kansas Ry.*, 135 U. S. 641, 658–659), the state decision is not relevant in interpretation of the federal Declaration of Taking Act.

[17] The legislative history of the Declaration of Taking Act is not directly helpful in interpreting the statute for the purposes of this case since the question here involved apparently did not present itself when the measure was being considered. However, such statements as were made regarding the effect

conclude that in every case the landowner shall receive the amount of compensation judicially awarded, not less and not more. If the estimated just compensation [11] is less than the award, a judgment for the deficiency is to be entered in favor of the landowner; equally a judgment in favor of the United States should be entered for any overpayment. If none of the deposit were turned over to the landowner before trial, surely the whole would not be later paid to him when compensation in a lesser amount had been deter-

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of the proposed legislation confirm rather than negative the view for which the Government is contending.

The Committee report, recommending to the House of Representatives passage of the bill, stated:

"* * * By this bill it is sought merely to provide a means whereby the Government may take title immediately, and leave the amount of compensation to be determined by the court according to the usual procedure." [H. Rep. No. 2086, 71st Cong., 3d Sess. 1.]

And the Chairman of the House Judiciary Committee stated of the measure—

"* * * It is simply taking up a general procedure in condemnation and altering that procedure in one particular, to wit, so that the Government will not be obstructed and hindered by unnecessary motions and appeals, but may pay the money into the court where the proceeding is pending, and let that money stand for the result of the condemnation procedure." [74 Cong. Rec. 777–778.]

[11] The statute speaks of the amount stated in the declaration of taking, and to be contemporaneously deposited with the court, as estimated just compensation, indicating that this amount is not conclusive; the just compensation is to be "ascertained and awarded in * * * [the judicial] proceeding and established by judgment therein * * *."

mined as just. The fact of payment before the determination of just compensation should not enlarge the property-owner's ultimate rights. Respondents Miller, McConnell, and Humphrey have received more than their due. It is well settled that the courts will order the repayment of government moneys which the recipient in justice ought to restore. *United States* v. *Barlow*, 132 U. S. 271, 281–282; *Wisconsin Central R. R.* v. *United States*, 164 U. S. 190, 211–212; *United States* v. *Wurts*, 303 U. S. 414. Therefore, we think that the United States can recover the excess amounts which those three respondents have received.

In addition to the reasons already advanced, there are strong reasons of policy which persuade in favor of the result reached by the district court and which should be influential in the absence of a clear manifestation of congressional intent. Cf. *Textile Mills Securities Corp.* v. *Commissioner*, 314 U. S. 326, 334–335. The purpose of the Declaration of Taking Act is to enable the Government to obtain quickly possession and title of land which it proposes to take in eminent domain and at the same time to afford the landowner the opportunity to receive contemporaneously an amount fixed by government officers which approximates the just compensation ultimately to be fixed. In order to effectuate this purpose of fairness to landowners and to relieve the Government of pay-

ing large amounts of interest (which it must pay at 6% per annum from the date of taking on the excess of the award over the deposit), acquiring officers of the Government in setting their estimates of compensation approximate as nearly as possible the actual value of the property being condemned. If the decision below stands, those officers in discharging their duties to the United States may be led to reduce their estimates by weighing the risk of overappraisal against the undesirable consequences of insufficient deposit. Such a result, tending to thwart the purpose of the statute to give quick and ample compensation to the landowner and tending to impose an unnecessary obligation on the Government to pay interest, has no advantages to recommend it and should not be upheld.

If restitution may be obtained by the Government at all, as we submit that it may, there would seem to be no reason why it should not be given in the condemnation proceeding, thus disposing finally of the matter in suit between the condemnor and the property-owner. A separate action by the Government would serve no purpose. After the award of compensation has been made, only an arithmetical computation is required to show whether and in what amount the United States is entitled to judgment against a property-owner who has withdrawn the deposit of estimated compensation; no issue remains unsettled for which a

trial or hearing would be necessary. To remit the condemnor to a second proceeding produces only formal litigation, resulting in waste of the parties' time and resources.

In cases similar to the present one, state courts have given judgments for restitution in the principal proceeding rather than require a further, separate proceeding. *Carisch* v. *County Highway Committee*, 216 Wis. 375, 378 *et seq.*; *St. Louis, K. & N. Ry.* v. *Knapp-Stout & Co.*, 160 Mo. 396, 416–417; *Kentucky Hydro-Electric Co.* v. *Woodard*, 216 Ky. 618, 624–625; *Douglas* v. *Indianapolis Traction Co.*, 37 Ind. App. 332, 338–339; see 2 Lewis, *Eminent Domain* (3d ed., 1909) 1471, sec. 843.

Decisions of this Court show that the district court had jurisdiction to achieve that result. Where money has been given or paid by one party in litigation to another party under the compulsion of a judgment or order of the court, the court will order restitution if its judgment or order is later set aside and justice requires that the payment be restored. *Baltimore & Ohio R. R.* v. *United States*, 279 U. S. 781; Ex parte *Lincoln Gas & Elec. Co.*, 257 U. S. 6; *Northwestern Fuel Co.* v. *Brock*, 139 U. S. 216; see *United States* v. *Morgan*, 307 U. S. 183, 197.

In the instant case all of the $2,550 deposited by the United States as estimated just compensation for the lands of Miller, McConnell, and Humphrey was paid to those respondents at the

district court's order. It later appeared that the just compensation amounted to only $600. Thus the earlier order for payment was disclosed to have created an inequitable result, as in the cases where a district court's judgment supporting an order of payment was reversed on appeal. Accordingly, the district court properly ordered repayment here of $1,950 by respondents to the United States.

CONCLUSION

The district court ruled correctly on the valuation of respondent's lands, and properly gave judgment of restitution in favor of the United States against respondents Miller, McConnell, and Humphrey for the excess of the deposit paid to them over the award of just compensation. It is therefore respectfully submitted that the judgment of the circuit court of appeals should be reversed.

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OCTOBER 1942.

APPENDIX

Section 1 of the Act of February 26, 1931, 46 Stat. 1421–1422 (U. S. C., title 40, sec. 258 (a)), provides:

> That in any proceeding in any court of the United States outside of the District of Columbia which has been or may be instituted by and in the name of and under the authority of the United States for the acquisition of any land or easement or right of way in land for the public use, the petitioner may file in the cause, with the petition or at any time before judgment, a declaration of taking signed by the authority empowered by law to acquire the lands described in the petition, declaring that said lands are thereby taken for the use of the United States. Said declaration of taking shall contain or have annexed thereto—
>
> (1) A statement of the authority under which and the public use for which said lands are taken.
>
> (2) A description of the lands taken sufficient for the identification thereof.
>
> (3) A statement of the estate or interest in said lands taken for said public use.
>
> (4) A plan showing the lands taken.
>
> (5) A statement of the sum of money estimated by said acquiring authority to be just compensation for the land taken.
>
> Upon the filing said declaration of taking and of the deposit in the court, to the use of the persons entitled thereto, of the

amount of the estimated compensation stated in said declaration, title to the said lands in fee simple absolute, or such less estate or interest therein as is specified in said declaration, shall vest in the United States of America, and said lands shall be deemed to be condemned and taken for the use of the United States, and the right to just compensation for the same shall vest in the persons entitled thereto; and said compensation shall be ascertained and awarded in said proceeding and established by judgment therein, and the said judgment shall include, as part of the just compensation awarded, interest at the rate of 6 per centum per annum on the amount finally awarded as the value of the property as of the date of taking, from said date to the date of payment; but interest shall not be allowed on so much thereof as shall have been paid into the court. No sum so paid into the court shall be charged with commissions or poundage.

Upon the application of the parties in interest, the court may order that the money deposited in the court, or any part thereof, be paid forthwith for or on account of the just compensation to be awarded in said proceeding. If the compensation finally awarded in respect of said lands, or any parcel thereof, shall exceed the amount of the money so received by any person entitled, the court shall enter judgment against the United States for the amount of the deficiency.

Upon the filing of a declaration of taking, the court shall have power to fix the time within which and the terms upon which the parties in possession shall be required to surrender possession to the petitioner.

The court shall have power to make such orders in respect of encumbrances, liens, rents, taxes, assessments, insurance, and other charges, if any, as shall be just and equitable."

Section 2 of the Act of August 26, 1937, 50 Stat. 844, 850, provides:

> That the $12,000,000 recommended for expenditure for a part of the Central Valley project, California, in accordance with the plans set forth in Rivers and Harbors Committee Document Numbered 35, Seventy-third Congress, and adopted and authorized by the provisions of section 1 of the Act of August 30, 1935 (49 Stat. 1028, at 1038), entitled "An Act authorizing the construction, repair, and preservation of certain public works on rivers and harbors, and for other purposes," shall, when appropriated, be available for expenditure in accordance with the said plans by the Secretary of the Interior instead of the Secretary of War: *Provided*, That the transfer of authority from the Secretary of War to the Secretary of the Interior shall not render the expenditure of this fund reimbursable under the reclamation law: *Provided further*, That the entire Central Valley project, California, heretofore authorized and established under the provisions of the Emergency Relief Appropriation Act of 1935 (49 Stat. 115) and the First Deficiency Appropriation Act, fiscal year 1936 (49 Stat. 1622), is hereby reauthorized and declared to be for the purposes of improving navigation, regulating the flow of the San Joaquin River and the Sacramento River, controlling floods, providing for storage and for the delivery of the stored waters thereof, for the reclama-

tion of arid and semiarid lands and lands of Indian reservations, and other beneficial uses, and for the generation and sale of electric energy as a means of financially aiding and assisting such undertakings and in order to permit the full utilization of the works constructed to accomplish the aforesaid purposes: *Provided further,* That, except as herein otherwise specifically provided, the provisions of the reclamation law, as amended, shall govern the repayment of expenditures and the construction, operation, and maintenance of the dams, canals, power plants, pumping plants, transmission lines, and incidental works deemed necessary to said entire project, and the Secretary of the Interior may enter into repayment contracts, and other necessary contracts, with State agencies, authorities, associations, persons, and corporations, either public or private, including all agencies with which contracts are authorized under the reclamation law, and may acquire by proceedings in eminent domain, or otherwise, all lands, rights-of-way, water rights, and other property necessary for said purposes: *And provided further,* That the said dam and reservoirs shall be used, first, for river regulation, improvement of navigation, and flood control; second, for irrigation and domestic uses; and, third, for power.

The Act of May 9, 1938, making appropriations for the Department of the Interior for the fiscal year ending June 30, 1939, 52 Stat. 291, 324, provided for the—

> Central Valley project, California, $9,000,000, together with the unexpended balance of the appropriation for this project, contained in the Interior Department Ap-

propriation Act, fiscal year 1938, with authority in connection with the construction of the Central Valley project, California, (1) to purchase or condemn and to improve suitable land for relocation of highways, roadways, railroads, telegraph, telephone, or electric transmission lines or other properties the relocation of which, in the judgment of the Secretary of the Interior, will be necessitated by construction or operation and maintenance of said project, (2) in full or part payment for said properties to be relocated, to enter into contracts with the owners of said properties to be relocated whereby they undertake in whole or in part the property acquisition and work involved in relocation and, in said Secretary's discretion, to pay in advance for said work undertaken by said owners; and (3) to convey or exchange acquired rights-of-way or other lands or rights-of-way owned or held by the United States for use in connection with said project, or to grant perpetual easements therein or thereover, or to undertake improvement or construction work connected with said relocations, for the purpose of effecting completely said relocations;

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